IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

MIKE TRBOVICH,

Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENT, UNITED MINE WORKERS OF AMERICA

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OPINIONS BELOW

The district court's Memorandum Opinion, published as *Hodgson* v. *United Mine Workers of America,* appears in 51 F.R.D. 270 (1970) and in the Appendix filed herein at p. 111. The Court of Appeals affirmed without opinion. Its judgment, published in 77 LRRM 2496, appears in the Appendix herein (p. 122).[1]

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[1]Herein, the term "district court" refers to the United States District Court for the District of Columbia, and the term "Court of Appeals" refers to the United States Court of Appeals for the District of Columbia Circuit.

Herein, Petitioner Trobovich is referred to as "petitioner" or "intervenor"; Respondent United Mine Workers of America as "UMW"; and Respondent James Day Hodgson, Secretary of Labor, as "Secretary".

Unless otherwise indicated, all emphases herein are supplied.

JURISDICTION

By order entered April 27, 1971, the Court of Appeals affirmed the district court's denial of petitioner's Motion for Leave to Intervene (A. 122).[2] The Petition for Certiorari, timely filed under 28 USCA 2101(c), was granted October 19, 1971 (A. 122). This Court's jurisdiction rests upon 28 USCA 1254(1).

STATUTES AND RULES INVOLVED

Statutory provisions involved are Sections 401, 402, 403 and 601(a) of the Landrum-Griffin Act [29 USCA 481, 482 483 and 521(a)]. Involved also are Rule 24(a) and Rule 82, Federal Rules of Civil Procedure. Provisions of the statutes and Rules involved are found in Appendix A hereto.

QUESTION PRESENTED

Whether a member of a labor organization who concededly satisfies all conditions for intervention of right under Rule 24(a), Federal Rules of Civil Procedure, is entitled to intervene, on behalf of himself and other members desiring a new election of union officers, in a civil suit brought by the Secretary of Labor under the Labor-Management Reporting and Disclosure Act of 1959 (called "LMRDA" or "Act") [29 USCA 481, *et seq.*] to set aside a union election.

COUNTERSTATEMENT OF THE CASE

A. THE 1969 ELECTION; THE CHALLENGE THEREOF; AND THE SECRETARY OF LABOR'S INVESTIGATION.

On December 9, 1969, an election of UMW's Inter-

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[2]The abbreviation "A." refers to the printed Appendix filed herein by petitioner.

national Officers was held among 195,000 members[3] and climaxed a bitter contest for UMW's presidency between W. A. Boyle, the incumbent President, and Joseph A. "Jock" Yablonski, in which the official tally showed Boyle received 80,577 votes and Yablonski received 46,073 (Pet. Br. 8, 10).[4]

On January 20, 1970, Mike Trbovich, campaign manager for Yablonski, filed a formal complaint with the Labor Department, through Joseph Rauh, Jr., challenging the December 9 election "for reasons stated in Yablonski letter to International tellers" and in "Rauh letter to you dated January 13th", requesting a Labor Department investigation of election and stating "new nominations and new elections essential" (A. 35). Though under the Act's Section 402(a) [29 USCA 482(a)], exhaustion of a member's union remedies is prerequisite to filing a complaint with the Secretary of Labor for an election investigation, respondent UMW, through its General Counsel, requested the Secretary to conduct an immediate investigation of the December 9 election, waiving UMW procedures.

A February 21 letter from attorney Rauh to the Secretary, complaining the Yablonski forces had unsuccessfully pleaded that the Secretary enforce the Act against

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[3]Although an International President, Vice President and Secretary Treasurer, as well as Auditors and Tellers, were elected, petitioner apparently contests only the International President's election.

[4]The abbreviation "Pet. Br." refers to petitioner's brief filed herein.

Petitioner's reference (Pet. Br. 10) to discovery of the bodies of Mr. and Mrs. Yablonski and their daughter is wholly irrelevant to the issue herein and its inclusion obviously is for purposes of prejudice.

Similarly, statements from Hearings, Subcommittee on Labor, UMW —1971, July 12, 1971, and Senate Hearings, Subcommittee on Labor, UMW Election—1970, p. 78 (Pet. Br. 10, fns. 2 and 3) lack *judicial finding* support.

UMW, assigned *four* reasons for setting aside the December 9 election, namely (A. 125):

> "1. Pre-election violations of law, including the massive use of union personnel and the union treasury, require a new election.
>
> "2. The voting of pensioners through unconstitutional bogey locals was obviously unlawful and requires a new election.
>
> "3. The over a hundred violations on election day, which Joseph A. (Chip) Yablonski recounted in his Affidavit, were probably matched some tenfold by those about which we have no information and these, too, require a new election.
>
> "4. The incidents of violence and the atmosphere of intimidation and fear made a fair election impossible, and require a new election."

Following UMW's waiver, the Secretary of Labor initiated a comprehensive investigation: 230 professionals, employed both in the field and in Washington, D. C., visited 822 of UMW's 1,260 voting locals, conducting 4,400 interviews of local UMW personnel, volunteer observers, union members, UMW personnel in 22 Districts and Washington, bank officials, transportation officials, radio, T.V., newspaper and advertising persons, involving more than 43,000 man hours of work (A. 152).

B. THE SECRETARY OF LABOR'S ACTION.

Upon review of the investigation, on March 5, 1970—less than two months after the investigation was started—respondent Secretary, pursuant to the Act's Section 402(b) [29 USCA 482 (b)], instituted the instant action in which the Secretary's first cause of action sought to have the district court set aside the election, al-

leging seven violations under the Act's Title IV which included grounds not brought to his attention in the Yablonski and Trbovich complaints. Respondent Secretary decided not to include in his action two allegations which Trbovich urged, namely: (1) that Title IV was violated because union members were permitted to vote in certain pensioner locals, denominated "bogus" locals and composed of less than 10 working members; and (2) Boyle engineered a pension increase to retired members from $115 to $150 per month "designed and intended to influence and may have influenced the votes of" pensioned union members "and, therefore, the outcome of the election and which jeopardized the continued solvency of the Fund" (A. 32).

The Secretary's second cause of action alleged UMW was failing to keep proper records on matters required to be reported under Title II and the Secretary sought to compel respondent UMW to maintain certain financial records (A. 15, 114).

In connection with his instituted action of March 5, 1970, the Secretary filed a preliminary injunction motion to prohibit UMW or its agents from thereafter spending funds without keeping records as required by Title II (A. 17). In addition to proceedings relating to the preliminary injunction motion, proceedings in the March 5, 1970 action have included voluminous interrogatories and requests for admissions, numerous depositions taken by both parties, and a trial has been proceeding since September 13, 1971.[6]

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[6]On October 29, 1971, upon UMW's motion, the trial was suspended until November 15, 1971, because of the death of UMW attorney Walter E. Gillcrist who had participated prominently as one of UMW's attorneys in that respondent's defense, not only in the district court, but in the Court of Appeals and in this Court as well.

C. PETITIONER'S MOTION TO INTERVENE.

On April 1, 1970, Miners for Democracy was allegedly founded and petitioner allegedly became its National Chairman (A. 29, 111). Approximately seven months after respondent Secretary's March 5 complaint was filed, petitioner, on October 2, 1970, moved the district court for leave to intervene on behalf of himself and as Chairman of and on behalf of Miners for Democracy (A. 28, *et seq.*). In a proposed complaint attached to the intervention motion, petitioner raised two issues in addition to those raised in the Secretary's action: *First*, that a pension increase by the Trustees of the United Mine Workers of America Welfare and Retirement Fund on June 23, 1969 constituted improper interference in the election campaign (A. 32); and *secondly*, that approximately 500 local unions were illegally constituted and should be disbanded before a court-ordered election is held (A. 31-33).

Additionally, intervenor's proffered complaint, seeking to raise a different cause of action under the Act's Section 201 (29 USCA 431), prayed for the appointment of monitors to oversee and approve maintenance of UMW's records and preservation of its assets until such time as the court believes such assets are not in danger of being dissipated, and to establish rules for conducting a new election (A. 33-34).[7]

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[7] The proffered complaint prays for relief, in addition to that in the Secretary's action, including directing UMW to disband local unions not complying with its Constitution and to require the transfer of all members of such locals to those complying with its Constitution, ruling that UMW's President Boyle breached his fiduciary duty to UMW members by raising bituminous pensions to benefit himself and other incumbent UMW officers, and granting intervenor reasonable attorney fees and costs (A. 33-34).

D. THE SECRETARY'S REASONS FOR REFUSING TO CONDUCT A PRE-ELECTION INVESTIGATION AND FOR NOT INCLUDING THE TWO GROUNDS URGED BY INTERVENOR.

1.

The Secretary's explanation for the Department's failure to conduct a pre-election investigation is that it "has *never* conducted an investigation of an election during the campaign" (A. 62) and that a pre-election investigation "is not contemplated by the statute" (A. 64); that while the Act's Section 601 might justify such an investigation, Section 601's language "may not be taken alone" but must be read in context and in light of the drafter's purpose (A. 67); and that "From 1959 until today, the sole use of Section 601 investigatory authority in election cases has been to collect or preserve evidence regarding elections which have already been held and, therefore, in circumstances in which the outcome of the election could not be affected" (A. 66). Noting, *inter alia*, that "The Government must . . avoid taking sides in a union election, or giving the appearance of doing so", the Secretary avowed that if the Department investigated "during the pre-election period, it might, by the mere fact of investigation alone, be interpreted as taking the side of the party alleging violations" (A. 69). The Secretary realistically observed that Congress was conscious that some violations are committed by an unsuccessful candidate and authorized the Department "to bring action *only* where it is determined that the violations 'may have affected the outcome of the election' " (A. 68). The Secretary cogently inquired, "Can one attribute to the Congress an intent that the Labor Department should investigate before an election and then wait until afterward to determine if the violation could have 'affected the outcome' of the election?" (A. 68). In

further explanation, the Secretary noted "There are an estimated 20,000 union elections each year" and the needed expansion of the investigatory staff if it were incumbent upon his Department to conduct pre-election alleged violations (A. 68).

Moreover, the Secretary explained that action by a union officer during a campaign, to improve the economic condition of his members, does not, by itself, violate the LMRDA (A. 63).

2.

The Secretary's responses to his failure to include in his action the pension increase of which petitioner complains (Pet. Br. 13-16), were (1) under the Act's Section 401(e) "improper interference", as the legislative history indicates, "is limited to interference that amounts to coercion or intimidation" and (2) the "pension levels were not increased by Boyle, but by a majority vote of the trustees" (A. 71). See *Lewis, et al.* v. *Pennington*, 6 Cir., 325 F.2d 804 (1963).[8]

Rejecting the appositeness of *NLRB* v. *Exchange Parts*, 375 U.S. 405 (1964) [cited by petitioner, Pet. Br. 16], wherein this Court held an employer interfered with employees' rights by granting a raise to employees during an organizing drive, the Secretary declared the raise demonstrated the employer's power is nonexistent to an international union contest "because neither faction has that kind of unilateral power" and "In a union election if one side is defeated, its power ends and, therefore, even a demonstration of power before the election is not

[8]The Sixth Circuit noted that the district court "expressed the opinion that the action of a majority of the Trustees was required to bind the Fund" under *Van Horn* v. *Lewis*, D.D.C., 1948, 79 F.Supp. 541, holding that action of one Fund Trustee "alone, without the authorization or consent of the majority of the Trustees, was not sufficient" to bind the Trustees (325 F.2d 818).

necessarily an intimation of what will happen after the election" (A. 72). Additionally, the Secretary posed the query that "If the Labor Department were to decide that a pension raise . . constitutes 'improper interference', would not an incumbent candidate's negotiation of a raise in the wage scale during the campaign period also be a violation of the Act?" (A. 73).

Significantly, although the pension increase was, as petitioner indicates (Pet. Br. 14), the subject of litigation in *Blankenship, et al.* v. *W. A. Boyle, et al.*, Civil No. 2186-69, D.D.C., no one and no court has suggested or intimated there should be a roll back of the pension increase. Even Senator Harrison Williams' auditors failed to appreciate that this industrywide irrevocable trust was supposed to operate on a pay-as-you-go basis. This trust was created for the benefit of coal miners and was never intended to accumulate money for its own sake. Financed by royalties on coal produced for use or for sale as a result of a collective bargaining agreement, there is not a shred of evidence to support the contention that the trust will become bankrupt by 1975. Further, petitioner's reference to an actuarial study of the Fund by the U. S. General Accounting Office (Pet. Br. 15) invites the comment made in *Van Horn* v. *Lewis*, *supra*, p. 542, that "the Court knows from a rather long business experience that actuaries can reach very many different conclusions if they want to reach them".

3.

The second issue involves petitioner's coined phrase "bogus locals" (Pet. Br. 16-17). The Secretary appropriately noted that "This allegation draws its chief appeal from the use of the words 'bogus' or 'bogey' " (A. 77). The Secretary, upon investigation, found that provisions

of UMW's Constitution requiring at least 10 working members before a local could receive a charter did not require that, if a chartered local ends up with fewer than 10 working members, its charter must be revoked (A. 78). Further, the Secretary declared, the Act contains no authorization "for the Government to compel the transfer of members of one local union to another local" and that "authority to reorganize the internal organizational structure of unions would be such an extraordinary power" as clearly to require new legislation (A. 78). The Secretary characterized UMW's interpretation as "not arbitrary" (A. 78).[9]

The district court's Memorandum Opinion, filed November 17, 1970, concluded that (A. 111):

> "As for the first cause of action, it is undisputed that the *exclusive* remedy for challenging an election already conducted is a suit by the Secretary of Labor pursuant to a complaint by a union member and a determination by the Secretary of 'probable cause' to believe that a violation of the law governing elections has occurred";[10]

that the Act's legislative history "makes us doubt that intervention by a union member in a suit by the Secretary to set aside an election would be consistent with the congressional purpose" (A. 111-12); that the Act's legislative history showed "the fact that Congress considered two alternatives—suit by union members and suit by the Secretary—and then chose the latter alternative and

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[9]This question previously was raised by petitioner's counsel in *Yablonski, et al.* v. *United Mine Workers of America*, Civil No. 3436-69, D.D.C. *sub nom Karl Kafton, et al.* (including Mike Trbovich) v. *United Mine Workers of America*. Further, as the Secretary found, "If the locals are not legal, the members would just have been transferred to other locals and voted at a different polling place. Remove the label 'bogus' local and the issue falls into perspective" (A. 77).

[10]The italicized word "*exclusive*" is that of the district court.

labelled it 'exclusive' deprives this Court of jurisdiction to permit the former alternative via the route of intervention" (A. 112).

As to the second cause, seeking an injunction to compel UMW to maintain financial records, the district court concluded, "The Secretary is the one person authorized by the statute to seek such an injunction" (A. 114).[11]

E. THE LOWER COURTS' JUDGMENTS.

The district court recognized petitioner's interest in insuring that union funds are spent for the sole benefit of its organization and members; but noted vindication thereof is sought in another suit in the same court (Civil Action 3436-69) for an accounting, restitution and damages pursuant to 29 USCA 185 and 501(a) and (b), wherein the issue is whether UMW misappropriated funds, and that such pending law suit sufficed to assert their rights (A. 114-15). In the instant case, declared the district court, "the dispositive issue is quite different, namely, whether the union has failed to maintain records" required to be reported (A. 114).

The district court rejected petitioner's argument that he had shown "the equivalent of being legally bound by the decree" herein (A. 115).

The Court of Appeals was "in substantial agreement with" the district court's Memorandum Opinion (A. 111) and affirmed the district court's judgment (A. 122).

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[11]Because petitioner's brief does not undertake to justify separately his proposed intervention as to the second cause of action, and is founded on the Act's Section 210 (29 USCA 440) which provides for an action by the Secretary as distinguished from an individual union member, UMW submits the same principles which reject petitioner's claim of intervention as to the first cause of action are equally apposite to the second cause of action.

SUMMARY OF ARGUMENT

I

The Court of Appeals, affirming the district court's Memorandum Opinion and Judgment, correctly held that enforcement of post-election remedy to challenge a union election is statutorily *the exclusive function of the Secretary of Labor*. The Act's Section 403, reading "The remedy provided by this subchapter for challenging an election already conducted shall be exclusive", expressly so provides.

Congress' statutory scheme made plain its intent to entrust enforcement of Title IV to the Secretary's expertise and discretion. Pursuant thereto, the Secretary of Labor instituted the instant action, but rejected therefrom two matters of which petitioner complains as a predicate for his claimed right to intervene in the Secretary's action, despite the Secretary's explicating his reasons for rejecting them. It is obvious that petitioner seeks herein, through intervention, to substitute his judgment for that of the Secretary. Sanction of the intervention motion would clearly thwart Congress' plain intent and frustrate the statutory scheme.

Contrary to petitioner's contention that the legislative history does not support the Court of Appeals' reading of the Act, the district court appropriately noted that "the fact that Congress considered two alternatives—suit by union members and suit by the Secretary—and then chose the latter alternative and labeled it 'exclusive' deprives this Court of jurisdiction to permit the former via the route of intervention." The Act's legislative history demonstrates the accuracy of the district court's finding.

Petitioner would avoid the Act's *unambiguous* language by an unsupported distinction between the Secre-

tary's exclusive right to initiate Title IV litigation and a claimant's intervention right after such litigation has been instituted. Petitioner, however, ignores that it is the *remedy* which Congress mandated shall be *exclusive*. That Congress intended no such distinction is manifested by Congress' care in delineating those instances in which a union member was to be vested with a litigant's status and those in which he was not so vested, thus evidencing that when Congress intended that union members could permissibly participate in litigation under the Act, Congress knew how to accord them that opportunity. *Inclusio unius est exclusio alterius.*

Further, where, as here, Congress carefully considered but rejected legislation to permit litigation by union members in relation to election matters, this Court rejected an interpretation "to achieve that which Congress refused to enact into law". *Colgate-Palmolive-Peet Co.* v. *NLRB*, 338 U.S. 355, 364 (1945). Implementation thereof is required in the instant action.

Petitioner concedes that *Stein* v. *Wirtz*, 10 Cir., 366 F.2d 188 (1966), cert. den. 386 U.S. 996 (1967), held that intervention was precluded by the Act's Section 403. *Stein's* denial accords with numerous district court decisions denying union members' right to intervene in Title IV actions. Moreover, *Stein* noted that the Act conferred upon the Secretary the *exclusive* right to bring civil actions for union election violations; and, declaring there was no way for a union member to prosecute this type of action by original suit, *Stein* continued that *"he cannot be permitted to do so by intervention, for Rule 24(a)(2) cannot be construed to extend federal jurisdiction"* (366 F.2d 189).

Affirmance of the Court of Appeals' judgment is therefore required.

II

Petitioner is not entitled to intervene as of right under Rule 24(a), Federal Rules of Civil Procedure. UMW has not conceded petitioner's satisfaction of the Rule's requirements, as the Question Presented assumes. UMW's contention is now and has been to the contrary.

Under Argument I, UMW has firmly established that a district court's jurisdiction to entertain an action of enforcement of post-election remedy challenging a union election is limited to one instituted by the Secretary of Labor. Rule 82 expressly states that "These rules shall not be construed to extend . . the jurisdiction of the United States district courts". Petitioner assiduously avoids directing this Court's attention to that Rule, although, relevantly, *Stein* expressly so held. Federal court refusal of union-member intervention (*ante*, p. 13) accords with the Secretary's interpretation of the Act and his opposition herein, which "is entitled to great deference". *Griggs* v. *Duke Power Co.*, 28 L. ed 2d 158, 165.

In any event, petitioner does not meet Rule 24(a)'s requirements for intervention as of right. Petitioner's emphasis that the Act is designed to be protective of union members' rights ignores totally the "public interest". *Wirtz* v. *Local 153, Glass Blowers Ass'n.*, 389 U.S. 463, 475 (1968), states that the Act was not designed "merely to protect the right of a union member to run for a particular office in a particular election . . Congress emphatically asserted *a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member*". Petitioner's claim of a special interest as leader of a union faction is not protected by Title IV. Petitioner has not only failed to show a legally recognized interest in the litigation's subject distinct from the interest represented by the Secretary, he has failed to establish that

the Secretary's representation of his interest as a union member is inadequate. The "burden to show that representation may be inadequate ought to be upon the applicant" (Moore's Federal Practice, 2d Ed., Vol. 3B, ¶24.09-1[4], p. 316).

Petitioner's argument ignores that the statute entrusts the Secretary with a discretion and right to make findings of probable cause, and that the Secretary rejected the two grounds upon which petitioner premised his claimed right to intervene. Petitioner seeks to do indirectly what concededly he could not do directly, namely, institute a Section 402(b) action, contrary to *Sears, Roebuck and Co.* v. *Carpet, etc. Layers*, 10 Cir., 410 F.2d 1148, 1151 (1969), that *"What cannot be obtained directly . . as a party, cannot be obtained indirectly through intervention."* Factors employed by petitioner as a predicate for intervention, in light of the statutory scheme and its legislative history, are, as this Court stated in *United Steelworkers* v. *R. H. Bouligny, Inc.*, 382 U.S. 145, 153 (1965), "decisions which we believed suited to the legislative and not the judicial branch".

This Court's agreement with petitioner would serve as a pattern for every candidate in a labor union election to become a potential intervenor, with all the attending procedural pandemonium created by a proposed intervention at variant stages of the Secretary's action.

Petitioner's citations are not supportive of his alleged right to intervene. They represent no more than "the claimed existence" of an intervention right "found in constant assertion" by petitioner's counsel, rather than in law. *G. & P. Amusement Co.* v. *Regent Theater Co.*, DC, N.D., Ohio, 1952, 107 F. Supp. 453, 461.

The Court of Appeals properly rejected petitioner's intervention effort.

ARGUMENT

I. THE COURT OF APPEALS, AFFIRMING THE DISTRICT COURT'S MEMORANDUM OPINION AND JUDGMENT, CORRECTLY HELD THAT ENFORCEMENT OF POST-ELECTION REMEDY TO CHALLENGE A UNION ELECTION IS STATUTORILY THE EXCLUSIVE FUNCTION OF THE SECRETARY OF LABOR.

As already noted, the Court of Appeals agreed with the district court's Memorandum Opinion and Judgment. The following discussion demonstrates the validity of the Court of Appeals' agreement and judgment:

A. The Statutory Language.

The Act (Section 403; 29 USCA 483) expressly provides that the exclusive remedy for enforcement of Title IV is an action by the Secretary of Labor: ". . *The remedy provided by this subchapter for challenging an election already conducted shall be exclusive*".

Unless clear language has lost its meaning, nothing could be clearer than the statutory language. Under the Act's Section 402(a), the Secretary conducts an investigation upon receipt of a member's complaint and files a civil action *only if he finds probable cause* to believe a violation of the Title has occurred in the union election's conduct. The number of investigators, election sites visited, interviews had and man hours employed by the Secretary in investigating the December 9 election leaves no doubt of the Secretary's compliance of duty imposed upon him by the statute *(ante,* p. 4). Further, the Secretary's full explication for rejecting the matters from his civil action mirrors the reasonableness of his exercised discretion. It is obvious that petitioner seeks herein, through intervention, to substitute his judgment for that of the Secretary.

However, as this Court recognized, Congress' statutory

scheme made plain its intent to entrust enforcement of Title IV to the Secretary's expertise and discretion. *Calhoon* v. *Harvey*, 379 U.S. 134, 140 (1964); *Wirtz v. Local 153, Glass Blowers Assn.*, 389 U.S. 463, 471-73 (1968); *Wirtz* v. *Local 125, Laborers Int. Union, etc.*, 389 U.S. 477 (1968). Significantly, absent an action instituted by the Secretary, petitioner's proposed intervention would be judicially abortive, and petitioner uses this happenstance as a medium by which to interject into the Secretary's action alleged violations, with respect to which the Secretary has made no findings of probable cause, in direct conflict with this Court's avowal in *Calhoon and Wirtz* v. *Local 153*, that "Congress deliberately gave exclusive enforcement authority to the Secretary, having 'decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest'" (389 U.S. 473). Sanction of the intervention motion would clearly thwart Congress' plain intent and frustrate the statutory scheme.

B. The Act's Legislative History Challenges Petitioner's Right to Intervene.

The district court, whose judgment the Court of Appeals affirmed, expressed the view that the Act's legislative history "makes us doubt that intervention by a union member" in the Secretary's suit would be consistent with the Act's congressional purpose (A. 111-12). Contrary to petitioner's contention (Pet. Br. 27) that the legislative history does not support the Court of Appeals' reading of the Act, the district court appropriately noted that "the fact that Congress considered two alternatives —suit by union members and suit by the Secretary—and then chose the latter alternative and labelled it 'exclusive' deprives this Court of jurisdiction to permit the

former via the route of intervention" (A. 112). The Act's legislative history demonstrates the accuracy of the district court's finding.

In S. 505, as referred to the Committee on Labor and Public Welfare, 86th Cong., 1st Sess. (1959), known as the Kennedy (or Kennedy-Ervin) Bill, Sections 302(a)-(d) are identical in all material respects with the Act's Sections 402 and 403 and provided for institution of suit by the Secretary, while Section 303 provided that the "remedies provided by this title shall be exclusive".[12]

In contrast to S. 505, Section 402(a) of H.R. 8342, as reported in the same Congress, *expressly authorized* a union member who had exhausted his internal union remedies to "bring a civil action against such labor organization". Similarly, in contrast to S. 505, the House Bill gave no power to the Secretary to institute judicial action to challenge elections.[13]

Likewise, in contrast to S. 505, on January 28, 1959—eight days following S. 505—there was also introduced in the Senate S. 748, which, as referred, expressly authorized "members of a labor organization to obtain appropriate relief" in an action or proceeding.[14]

At the same Session of Congress, there was reported (under authority of the order of the Senate of April 13, 1959) by Mr. Kennedy, with amendments, S. 1555 which, in its Section 302, authorized a civil action to be brought by the Secretary.[15] A report on S. 1555 noted that:

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[12]See *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* (published by the National Labor Relations Board—U. S. Government Printing Office, 1959), Vol. I, pp. 29, 62-64.

[13]*Ibid*, Vol. I, pp. 687, 727.

[14]*Ibid*, Vol. I, pp. 84, 112.

[15]*Ibid*, Vol. I, pp. 338, 376.

> "However, since the bill provides an effective and expeditious remedy for overthrowing an improperly held election and holding a new election, *the Federal remedy is made the sole remedy and private litigation would be precluded*".[16]

The Senate enacted S. 1555 on April 27, 1959[17] and the House subsequently passed its House Bill 8342, as amended.[18] In a Conference Report (H.R. No. 147 on S. 1555), managers on the part of the House reported, with reference to the issue herein, that:

> "The House amendment differs from the Senate bill in that the *members of the union*, instead of the Secretary, can bring the civil action, and, therefore, there would be no investigation by the Secretary"

and, further,

> "The conference substitute is the same as the Senate bill on this point".[19]

The Bill, as reported out by the Conference Committee, became the Act.[20]

Nothing in petitioner's treatment of the Act's legislative history (Pet. Br. 25-34) contains a single utterance in challenge of the district court's legislative finding and the Court of Appeals'. affirmance thereof. Petitioner would avoid the Act's *unambiguous* language that "The remedy provided . . for challenging an election already conducted shall be exclusive" by an unsupported distinction between the Secretary's exclusive right to initiate Title IV litigation and a claimant's intervention right

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[16]*Ibid*, Vol. I, pp. 397, 417.

[17]*Ibid*, Vol. II, pp. 1431, *et seq.*

[18]*Ibid*, Vol. II, pp. 1693-1702.

[19]*Ibid*, Vol. I, pp. 934, 939.

[20]*Ibid*, Vol. II, pp. 1452-53, 1738-39.

after such litigation has been instituted. However, petitioner ignores that it is the *remedy* which Congress has mandated shall be *exclusive*. As stated in the Second Circuit's *Wirtz* v. *Operating Engineers*, 366 F.2d 438, 442 (1966), "Congress intentionally created a narrow remedy under Title IV . . so that interference with union elections and management would be kept at a minimum".

Further, that Congress intended no such distinction as petitioner presses upon this Court is manifested by Congress' care in delineating those instances in which a union member was to be vested with a litigant's status and those in which he was not so vested: Title I, Section 102 (29 USCA 412) expressly provides a union member's right to bring suit to redress violations of that Title; Title IV, Section 401(c) [29 USCA 481(c)] accords to "any bona fide candidate" for a union office the right of suit; and, similarly, trusteeships can be voided by action of either the Secretary or individual union members under the Act's Section 304 (29 USCA 464).

Thus, it is evident that when Congress intended that union members could permissibly participate in litigation under the Act, Congress knew how to accord them that opportunity. Apropos is the maxim *inclusio unius est exclusio alterius*. The statutory provisions granting members the right to a litigation status stand in sharp contrast to the herein scrutinized language that "The remedy provided . . for challenging an election already conducted shall be exclusive".

Where, as here, Congress carefully considered but rejected legislation which would have permitted union members to litigate in relation to election matters, this Court rejected an interpretation "to achieve that which Congress refused to enact into law". *Colgate-Palmolive-*

Peet Co. v. *NLRB*, 338 U.S. 355, 364 (1949). UMW submits that implementation thereof is required in the instant situation.

C. Motions to Intervene Have Been Rejected by Federal Courts.

Petitioner concedes (Pet. Br. 22, fn. 13) that *Stein* v. *Wirtz*, 10 Cir., 366 F.2d 188 (1966), cert. den 386 U.S. 996 (1967) held that intervention was precluded by the Act's Section 403. Even though *Stein's* intervention motion was denied prior to the effective date of the 1966 amendments to Rule 24, Federal Rules, the Tenth Circuit's decision came subsequent thereto and, relevantly, its result accords with the numerous district court decisions *(post,* p. 22) denying union members' right to intervention in Title IV actions. Moreover, in affirming the district court's denial of *Stein's* motion, the Tenth Circuit stated (366 F.2d 189):

> "The Act confers upon the Secretary of Labor the *exclusive* right to bring civil actions against labor organizations for violations of members' rights in union elections and election procedures. 29 U.S.C. §§482(b), 483; *Calhoon* v. *Harvey*, 379 U.S. 134, 85 S. Ct. 292, 13 L. Ed. 2d 190. There being no way for appellant to prosecute this type of action by original suit, he cannot be permitted to do so by intervention, for Rule 24(a)(2) cannot be construed to extend federal jurisdiction. Fed. R. Civ. P. 82; Bantel v. McGrath, 10 Cir., 215 R.2d 297."[21]

As above indicated, district courts have denied motions to intervene in actions brought by the Secretary of Labor to invalidate union elections. *Shultz* v. *Steelworkers*, DC,

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[21] The italicized word "exclusive" is that of the Tenth Circuit.

W.D. Pa., 1970, 313 F.Supp. 549, 74 LRRM 2222 wherein the applicant for intervention was the complainant to the Secretary of Labor; *Wirtz* v. *Local Union No. 1377, Int. Bro. of Electrical Workers,* DC, N.D. Ohio, 1968, 288 F.Supp. 914; *Wirtz* v. *Operating Engineers,* DC, C.D. Calif., 1967, 66 LRRM 2080; *Wirtz* v. *Local 825,* DC, N.J., 1965, 60 LRRM 2092; *Wirtz* v. *Local 560, Teamsters,* DC, N.J., 1965, 61 LRRM 2470.[22a]

UMW submits that affirmance of the Court of Appeals' judgment is required.

II. PETITIONER IS NOT ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(a), FEDERAL RULES OF CIVIL PROCEDURE.

A. Petitioner's Right to Intervene Has Not Been Conceded by UMW.

While the Question Presented *(ante,* p. 2) assumes that it is conceded that petitioner satisfies all requirements for intervention of right under Rule 24, Federal Rules of Civil Procedure, actually UMW has made no such concession, petitioner's brief makes no claim it has and, indeed, UMW's contention is now and has been to the contrary throughout the instant litigation.[23]

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[22]Courts have rejected suits instituted by union members questioning the validity of already-conducted union elections, as well as suits to compel the Secretary to bring a Title IV post-election action. See *Wirtz* v. *Local Union 410, et al., Int. Union of Operating Engineers,* 2 Cir., 366 F.2d 438 (1966); *Mamula* v. *United Steelworkers of America,* 3 Cir., 304 F.2d 108 (1962); *McGuire* v. *Locomotive Engineers,* 6 Cir., 426 F.2d 504 (1970); *Katrinic* v. *Wirtz,* DC, D.C., 1966, 62 LRRM 2557; *Ravaschieri* v. *Schultz,* DC, S.D. N.Y., 1970, 75 LRRM 2272; *Morrissey* v. *Shultz,* DC, S.D. N.Y., 1970, 311 F.Supp. 744, 74 LRRM 2679; *DeVito* v. *Shultz,* DC, D.C., 1969, 300 F.Supp. 381. Additionally, *Wirtz* v. *National Maritime Union of America,* 2 Cir., 409 F.2d 1340 (1969) affirmed the denial of a motion by union members to overrule the Secretary with respect to rules he formulated to govern a new election.

[23]Petitioner's claim of concession is limited to the Secretary. Notably, even petitioner admits that the Secretary opposes petitioner's position of concession (Pet. Br. 21, fn. 11).

B. Rule 82 Precludes Application of Rule 24, Federal Rules.

UMW's discussion under Argument I has firmly established that a district court's jurisdiction to entertain an action of enforcement of post-election remedy challenging a union election is limited to one instituted by the Secretary of Labor. Hence, a vital observation in relation to petitioner's claim of right to intervene (Pet. Br. 34-44) is the fact that Rule 82, Federal Rules, expressly states that "These rules shall not be construed to extend . . the jurisdiction of the United States district courts . ." *Petitioner assiduously avoids directing this Court's attention to Rule 82, although, relevantly, the Stein case expressly so held.*

As *Stein* holds, *"There being no way for appellant to prosecute this type of action by original suit, he cannot be permitted to do so by intervention, for Rule 24(a)(2) cannot be construed to extend federal jurisdiction" (366 F.2d 189).*

C. In Any Event, Petitioner Does Not Meet Rule 24(a)'s Requirements for Intervention as of Right.

Rule 24(a), Federal Rules of Civil Procedure, provides:

> "Upon timely application anyone shall be per- to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Moore's Federal Practice, 2d Ed., Vol. 3B, ¶24.09-1[1], pp. 284-85 recites:

> "In summary, an application for non-statutory intervention as of right under the 1966 version of Rule 24(a) must meet the following requirements: The application must (1) be timely, (2) show an interest in the subject matter of the action, (3) show that the protection of the interest may be impaired by the disposition of the action, and (4) show that the interest is not adequately represented by an existing party."

Petitioner's emphasis that the Act is designed to be protective of rights of union members (Pet. Br. 40) ignores totally the "public interest", for, as this Court stated in *Wirtz* v. *Local 153, Glass Blowers Assn.*, 389 U.S. 463, 475 (1968), the Act was not designed "merely to protect the right of a union member to run for a particular office in a particular election . . Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member". Thus, petitioner's claim of a special interest as leader of a faction within the union is not a right protected by Title IV. Hence, petitioner has not only failed to show a legally recognized interest in the litigation's subject distinct from the interest represented by the Secretary, he has failed to establish that the Secretary's representation of his interest as a union member is inadequate. An applicant whose "interest is adequately represented by existing parties" has no right to intervene under Rule 24(a)(2). *Moore's Federal Practice*, 2d Ed., Vol. 3B, ¶24.09-1[4], p. 316, recites that "the burden to show that representation may be inadequate ought to be upon the applicant".

Petitioner's argument also ignores that the statute vests in the Secretary a discretion and the right to make findings of probable cause, and that in the exercise of such statutory authority the Secretary *rejected the two grounds upon which petitioner premised his claimed right to intervene.* Not only does petitioner seek herein to substitute his judgment for that of the Secretary, *but he seeks to do indirectly what concededly he could not do directly,* namely, institute a Section 402(b) action, which prompts UMW to urge this Court's implementation of the Tenth Circuit's holding in *Sears, Roebuck Co.* v. *Carpet, etc. Layers,* 410 F.2d 1148, 1151 (1969) that *"What cannot be obtained directly . . .* as a party, *cannot be obtained indirectly through intervention".*

Petitioner's plaint (Pet. Br. 42-44) that the Secretary and those designated by him to enforce Title IV have limited knowledge of the internal structure of unions, including UMW, and limited resources for investigating alleged violations is abortive in light of the thorough investigation made by the Secretary in the instant case. In any event, these, and the other factors employed by petitioner as a predicate for intervention (Pet. Br. 42-44), are, as this Court stated in *United Steelworkers* v. *R. H. Bouligny, Inc.,* 382 U.S. 145, 153 (1965), "decisions which we believe suited to the legislative and not the judicial branch". The Act's legislative history underscores the necessity for *Bouligny's* implementation in the instant case.

This Court's agreement with petitioner would serve as a pattern for every candidate in a labor union election to become a potential intervenor with all the attending procedural pandemonium created by proposed intervention at variant stages of the Secretary's action.

D. Petitioner's Citations Are Not Supportive of His Alleged Right to Intervene.

None of the citations in petitioner's brief (pp. 34-44) support his contention of his claimed right to intervene in the Secretary's action.

Int. Union, UAW v. *Scofield,* 382 U.S. 205 (1965) [Pet. Br. 36-40] is inapposite. While in *Scofield,* this Court held the successful party in an NLRB proceeding could intervene to protect his victory upon appeal by the unsuccessful party, this Court's opinion suffices to demonstate *Scofield's* inapplicability in its recognition that (p. 219)

> ". . When the General Counsel issues a complaint and the proceeding reaches the adjudicative stage, the course the hearing will take is in the agency's control, *but the charging party is accorded formal recognition: he participates in the hearings as a 'party';* he may call witnesses and cross-examine others, may file exceptions to any order of the trial examiner, and may file a petition for reconsideration to a Board order . . Of course, if the Board dismisses the complaint, he can obtain review as a person aggrieved . ."

Thus, *Scofield* allowed a participant in the fact-finding procedures to protect his victory on appeal, which this Court held justified by congressional intent in passing the National Labor Relations Act and that the intervention did not "impair effective discharge" of the Board's duties (382 U.S. 215) and would save judicial time by preventing a charging party's second appeal should NLRB's decision be reversed (p. 212).

The Act under scrutiny herein not only does not provide for a complainant to the Secretary to be a statutorily recognized party, but, to the contrary, "The remedy provided . . shall be exclusive" and, as shown herein *(ante,*

p. 17), the legislative history affirmatively demonstrated congressional negation of that right to a complaining union member and Rule 82 forbids expansion of jurisdiction to include Rule 24(a) intervention *(ante,* p. 23).

Indeed, *Sears, Roebuck and Co. v. Carpet, etc. Layers,* 10 Cir., 410 F.2d 1148 (1969) held *Scofield* to be "distinguishable and of limited assistance" in its holding that a charging party who appeared in an action by NLRB's Regional Director for a temporary injunction under Section 10(1), Labor Management Relations Act of 1947, lacked standing to appeal the district court's denial of an injunction, because the charging party before NLRB is not a party in a Section 10(1) action. Significantly, to the charging party's alternative contention that it had a right to intervene to prosecute the appeal, the Tenth Circuit, rejecting such contention, cogently stated: "What cannot be obtained directly by asserting a right to appeal as a party, cannot be obtained indirectly through intervention" (410 F.2d 1151).[24] Accord: *Reynolds* v. *Marlene Industries Corp.*, DC, S.D. N.Y., 1966, 250 F.Supp. 722.

Petitioner's arguments (Pet. 40-41) that a complaining party before the Secretary "has an even greater role than the charging party before" NLRB "and hence, even stronger standing to intervene in subsequent judicial proceedings" is not supported by *Hodgson* v. *Steelworkers Local 6799,* 403 U.S. 333 (1971), which pertained only to the Secretary's right to expand the complaint made to him by a union member.

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[24]Subsequently this Court vacated the Tenth Circuit's judgment and remanded the case to the district court with directions to dismiss the complaint as moot, since the question whether the employer (Sears) could appeal from the district court's denial of a Section 10(1) injunction had become moot. *Sears, Roebuck and Co. v. Carpet, etc. Layers,* 397 U.S. 655 (1970).

Nor is petitioner aided by *Shultz* v. *United Steelworkers of America*, DC, W.D. Pa., 1970, 312 F.Supp. 538, 539, which allowed intervention to protect "property interests of the applicant as an individual".

Further, like *Scofield (ante,* pp. 26-27), neither *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Corp.*, 386 U.S. 129 (1967), nor *Citizens to Preserve Overton Park* v. *Volpe*, 401 US. 402 (1971) [cited by petitioner, Br. 22, 35, 38] was concerned with a situation comparable to the instant one wherein Congress mandated that the remedy instituted by the Secretary is *exclusive*, wherein the Act's legislative history shows unequivocally that Congress did not intend that union members be vested with a litigant's status, and wherein use of Rule 24(a) is precluded by Rule 82, both Federal Rules.

Petitioner's citations represents no more than "the claimed existence" of an intervention right "found in constant assertion" by petitioner's counsel, rather than in law. *G. & P. Amusement Co.* v. *Regent Theater Co.*, DC, N.D. Ohio, 1952, 107 F.Supp. 453, 461.

Federal court refusal of union-member intervention *(ante,* pp. 21-22) accords with the Secretary's interpretation of the Act and his opposition herein, which "is entitled to great deference". *Griggs* v. *Duke Power Co.*, 28 L. ed 2d 158, 165 (1971).

The foregoing discussion abundantly demonstrates that petitioner is not entitled to intervene as of right under Rule 24(a), Federal Rules, and the Court of Appeals appropriately placed its approval upon the district court's rejection of petitioner's effort to do so.

CONCLUSION

For the reasons stated herein, UMW submits that this Court should affirm the judgment of the Court of Appeals in the instant case.

Respectfully submitted,

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APPENDIX

APPENDIX

Title IV of the Labor-Management Reporting and Disclosure Act of 1959 provides as follows:

§ 401 (29 USCA 481): Terms of Office and Election Procedures—Officers of National or International Labor Organizations, Manner of Election

(a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

Officers of local labor organizations; manner of election

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

Requests for distribution of campaign literature; civil action for enforcement; jurisdiction; inspection of membership lists; adequate safeguards to insure fair election

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor

of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

Officers of intermediate bodies; manner of election

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

Nomination of candidates; eligibility; notice of election; voting rights; counting and publication of results; preservation of ballots and records

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every

member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

Election of officers by convention of delegates; manner of conducting convention; preservation of records

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this subchapter. The officials designated in the constitution and bylaws or the

secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

Use of dues, assessments or similar levies, and funds of employer for promotion of candidacy of person

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

Removal of officers guilty of serious misconduct

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

Rules and regulations for determining adequacy of removal procedures

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h) of this section. Pub.L. 86-257, Title IV, § 401, Sept. 14, 1959, 73 Stat. 532.

§ 402 (29 USCA 482): Enforcement—Filing of Complaint; Presumption of Validity of Challenged Election

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

Investigation of complaint; commencement of civil action by Secretary; jurisdiction; preservation of assets

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of

this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

Declaration of void election; order for new election; certification of election to court; decree; certification of result of vote for removal of officers

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

Review of orders; stay of order directing election

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal. Pub. L. 86-257, Title IV, § 402, Sept. 14, 1959, 73 Stat. 534.

§ 403 (29 USCA 483). Application of Other Laws; Existing Rights and Remedies; Exclusiveness of Remedy for Challenging Election

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive. Pub. L. 86-257, Title IV, § 403, Sept. 14, 1959, 73 Stat. 534.

SUBCHAPTER VII.—

MISCELLANEOUS PROVISIONS

Title VI of the Labor-Management Reporting and Disclosure Act of 1959 provides as follows:

§ 601 (29 USCA 521).. Investigations by Secretary; applicability of other laws

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for

failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

* * * * *

FEDERAL RULES OF CIVIL PROCEDURE

Rule 24. Intervention.

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

* * * * *

Rule 82. Jurisdiction and Venue Unaffected. These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein. An admiralty or maritime claim within the meaning of Rule 9(h) shall not be treated as a civil action for the purposes of Title 28, U.S.C., §§1391-93.
